

REPORT OF THE
CONSTRUCTION INDUSTRY ADVISORY COMMITTEE

APRIL 1992

April 30, 1992

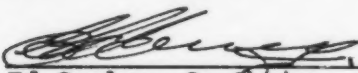
Honourable Robert W. Mitchell, Q.C.
Minister of Human Resources,
Labour and Employment
Room 355 Legislative Building
Regina, Saskatchewan
S4S 0B3

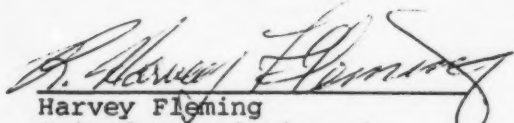
Dear Mr. Mitchell:

We, the members of the Construction Industry Advisory Committee
appointed to review the state of labour relations in the construction
industry and make recommendations, hereby submit our unanimous Report.

Yours respectfully,

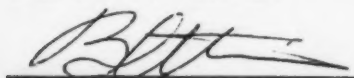
Building Trades

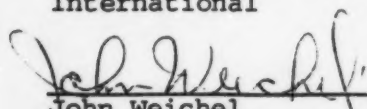

Ed Cowley, Co-Chair
International Union of


Harvey Fleming
United Association of
Plumbers and Pipefitters

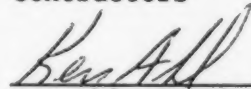

John MacLeod
International Brotherhood
of Electrical Workers

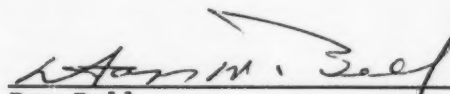

Bruce McDonald
Brotherhood of Painters
and Allied Trades

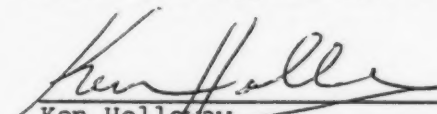

Bert Ottenson
Sheet Metal Workers
International

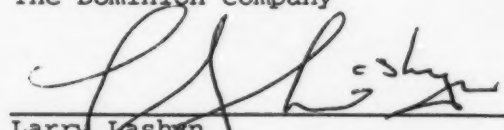

John Weichel
International Association
of Heat and Frost Insulators
and Asbestos Workers

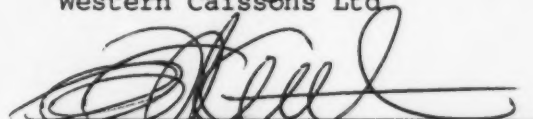
Contractors

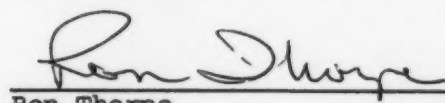

Ken Ahl, Co-Chair
Comstock Canada


Don Bell
Insulation Applicators Ltd.


Ken Holloway
The Dominion Company


Larry Lashyn
Western Caissons Ltd.


Sid Matthews
Subterranean (Western) Ltd.


Ron Thorpe
Thorpe Brothers Limited

REPORT OF THE CONSTRUCTION INDUSTRY ADVISORY COMMITTEE

1. INTRODUCTION

A. Background

The Construction Industry Advisory Committee was established on December 6, 1991 to review the state of labour relations in the construction industry and report to the Minister of Human Resources, Labour and Employment on the following:

1. The state of collective bargaining in the construction industry, including union-management relations and the status of collective agreements;
2. Current issues within the industry, including recommendations to address those issues;
3. If legislation is determined to be necessary, the principles and key provisions of such legislation.

Any discussion of the state of labour relations in the construction industry in Saskatchewan and recommendations for solutions to the longstanding difficulties must be prefaced by a survey of the history of the industry.

In 1979, Bill 88, an act respecting labour relations in the construction industry was introduced in the Legislature. On May 4, 1979, the Bill was given Royal Assent and was proclaimed as The Construction Industry Labour Relations Act, R.S.S. Ch. c-29.1. It was designed to create a framework conducive to

stable, rational and orderly collective bargaining.

The Act established centralized collective bargaining on a province-wide basis, between an employers' organization and a trade union in respect of a trade division. The trade divisions effectively aligned identifiable classes or groups of unionized employers who undertake contract work employing specific trades along craft lines.

Collective bargaining agreements established pursuant to this procedure applied to all unionized employers and employees in that particular trade division in the province.

In 1980, it is estimated that nearly 75% of work performed in the industry was done by unionized contractors.

1982 found the Saskatchewan construction industry facing a lengthy and highly controversial strike. The high percentage of unionization meant that the strike had particularly widespread effect within the industry. The strike served to heighten tensions in labour-management relations.

Following quickly on the heels of the strike was the economic downturn marked by the recession of 1982 and 1983. Construction starts declined sharply and unionized contractors faced increasing competition from non-union companies undercutting labour costs.

The government undertook consultation amongst members of the industry in an attempt to find solutions to the problems facing the industry. Suggestions that the government repeal the anti-spinoff provisions of the Act were roundly criticized by the unions.

In December, 1983, the government passed legislation to repeal The Construction Industry Labour Relations Act.

In 1985, following a lengthy impasse in negotiations between employers and trade unions, the government established a board of conciliation composed of Nick Sherstobitoff, Q.C., Larry Seiferling and chaired by Richard Hornung, Q.C. to assist the parties in reaching new or revised collective agreements. The board was unsuccessful in its conciliation efforts, but made recommendations to the government concerning the areas of dispute in a report dated October 4, 1985. Among the collective bargaining issues addressed, the report considered appropriate bargaining structure, recommending that accreditation legislation and anti-spinoff provisions be reintroduced.

As consensus between the construction unions and employers could not be achieved no action was taken by the government regarding the recommendations.

B. Present Situation

Much has changed in the construction industry in Saskatchewan in

the past ten years. The slowdown in the economy beginning with the recession in the early 1980's and continuing through to present uncertain conditions, provides the backdrop against which all sectors of the construction industry, including the unionized sector, continue to wage their struggles for growth and survival.

A difficult situation was made worse for the unionized sector of the industry by the repeal in 1983 of The Construction Industry Labour Relations Act. Without legislation to prevent double-breasting, there was a proliferation of spinoff companies which the unions found fruitless to attempt to organize and draw under a collective agreement in the absence of accreditation legislation.

Owners, when bidding projects have become increasingly disinclined to accept tenders from unionized contractors, fearing the spectre of strikes and jurisdictional disputes which could drive up project costs and delay completion. And thus, the fortunes of the unionized sector of the construction industry in Saskatchewan have spiralled downwards to a situation where it is estimated that about 20% of work is presently done by unionized companies.

2. THE PROCESS

The Construction Industry Advisory Committee was established by Robert W. Mitchell, Minister of Human Resources, Labour and Employment on December 6, 1991 by Minister's Order pursuant to

The Government Organization Act.

The Committee contains representation from both unionized contractors and building trades unions. The Committee as originally constituted, was Co-chaired by Ed Cowley of the International Union of Operating Engineers and Jack Hansen of Con-Force Structures Ltd. Due to ill health, Jack Hansen resigned on February 7, 1992 and was replaced as Co-chair for the unionized contractors by Ken Ahl of Comstock Canada. The vacancy on the Committee was filled by the appointment of Ken Holloway of The Dominion Company.

The Committee began its work in December of 1991 and continued meeting through the new year to meet the deadline of reporting to the Minister. The Committee members consulted widely and brought the views of both the unionized contractors and members of the building trades unions to the table for discussion. We are confident that the conclusions reached and the recommendations made in this report reflect the consensus not only of all committee members, but also the unionized sector of the industry.

3. RECOMMENDATIONS

A. The Partnership

The Committee recognizes, indeed keenly feels the precarious situation facing the unionized construction industry in this

province. The unionized sector is in jeopardy and a cooperative effort by the unionized contractors and the building trades unions is required to ensure its survival.

It was in that spirit of cooperation that the Committee worked to reach a consensus on all of the recommendations which follow. In working together, the building trades and the unionized contractors have laid the groundwork for a lasting partnership that will facilitate ongoing communication amongst the players in the unionized sector and ensure its continued growth and survival.

B. Legislation

In considering the problems facing the unionized construction industry, it soon became apparent that a legislative response would be required on the part of the government. In discussing what form that legislation might take, the Committee considered models from other jurisdictions as well as drawing upon the Saskatchewan experience under The Construction Industry Labour Relations Act. The Committee considered the concept of fair wage legislation or policy such as that found in Manitoba and most recently introduced in British Columbia. It also reviewed accreditation legislation from other Canadian jurisdictions including the British Columbia model of multi-trade bargaining.

The Committee agrees that any legislation must establish a bargaining structure that will provide for long-range competitiveness and stability in the industry.

THE COMMITTEE RECOMMENDS THAT:

The government reintroduce accreditation legislation which provides for trade-by-trade bargaining on a province-wide basis, substantially in accordance with the previous Construction Industry Labour Relations Act.

With the exception of the changes, additions and deletions below, the Committee accepted the provisions of The Construction Industry Labour Relations Act as they existed before repeal:

Section 2. Interpretation

In defining the scope of the Act, Section 3 states that the Act applies to the construction industry in Saskatchewan. However, nothing in the interpretation section defines "construction industry". Therefore, the Committee recommends that Section 2 be expanded to include a subsection defining "construction industry" as follows:

2(e) "construction industry" means the constructing, erecting, reconstruction, altering, remodelling, repairing, revamping, renovating, maintenance, decorating or the demolishing of any buildings, structures, roads, sewer, water mains,

pipelines, tunnels, shafts, bridges, wharfs, piers, canals, dams or any other works or any part thereof and includes all machinery, plant, fixtures, facilities, equipment, systems and processes contained therein or used in connection therewith;

Section 2(c). "Sector of the Construction Industry"

The sectors of the construction industry are defined according to the different types of work in the industry. Work done in relation to powerline transmission is of a different type than the work done in the other sectors. Therefore, the Committee recommends that the definition of "sector of the construction industry" be expanded to include a clause creating a powerline transmission sector as follows:

2(i)(vi) the powerline transmission sector

Section 4. Construction of Act

Concerns were expressed over the Labour Relations Board's recent practice of granting project or spot certifications that restrict the scope of certification orders to specific projects. It was agreed that both bargaining and certification should occur on a province-wide basis.

Therefore, the Committee recommends the following subsection be added to Section 4:

- 4 (2) Where a trade union applies for certification as bargaining agent of the employees of an employer, the board shall determine the unit of employees that is appropriate for collective bargaining by reference to the geographical jurisdiction of the trade union applying and it shall not confine the unit to a particular project.

Section 6. Powers of the Board

Under Section 22, a violation of the Act or a failure to comply with an order of the Labour Relations Board is an offence, punishable on summary conviction by the courts. However, resort to the courts to compel compliance with the Act or a board order can be costly and time consuming. The Committee recommends that the powers of the board be expanded to give the Labour Relations Board the power to order compliance with the Act or a board order, rather than forcing parties to utilize the more expensive and cumbersome court system.

Therefore, the Committee recommends that, in addition to the offence provisions of Section 22, the following subsection be added to Section 6:

- 6 (3) The Board may make orders:
- (a) determining whether a violation of this Act is being or has been engaged in; and
 - (b) requiring compliance with the provisions of this

Act, with any rules or regulations made under this Act or with any matter before the Board.

Section 9. Designation of Appropriate Trade Division

Section 9 should give flexibility to the unionized employers and the trade union or unions to agree upon an appropriate trade division and provide that the Minister will respect that agreement. In the absence of an agreement the Minister should retain the power to determine the appropriate trade division.

Section 9 should also allow for amendment to the designation of trade division and should further legislate a time frame within which a trade division must be designated by the minister to ensure designation applications are dealt with on a timely basis.

Therefore, the Committee recommends that Section 9 read as follows:

- 9(1) The Minister may determine a trade division to be an appropriate trade division for the purposes of this Act.
- (2) Before making a determination pursuant to subsection (1), the Minister may conduct, or cause to be conducted, any inquiry and consultations that he considers necessary.
- (3) In making a determination pursuant to subsection (1), the Minister shall recognize any agreement between unionized

employers and a trade union or unions as to the appropriate trade division for the purposes of this Act.

- (4) The Minister shall consider and decide any requests to make a determination pursuant to subsection (1) within 90 days of the receipt of the request.
- (5) Where the Minister makes a determination pursuant to subsection (1), he may do so with respect to any one or more sectors of the construction industry.
- (6) At any time following a determination pursuant to subsection (1), the Minister, where there is mutual agreement between unionized employers and the trade unions, may amend the determination.

Section 10 and 11. Employer's Organization

The Committee wishes to preserve the mechanism in sections 10 and 11 which provide for a window of opportunity during which the Minister's designation of a representative employers' organization can be reviewed or changed upon application.

Sections 10 and 11 should also continue to provide for a "lock-in period" following the initial designation of a representative employers' organization. This lock-in is intended to give a newly designated representative employers' organization an opportunity to become established in its operation before the

designation can be subject to review.

The Committee agrees that the appropriate window and lock-in period would be provided by changing January 1981 in section 11 to January 1994 as the first "window of opportunity".

Section 11 should also be amended to change October 1, 1979 to November 1, 1992 as the date beyond which determinations of trade divisions and designations of employers' organizations will be made by the Labour Relations Board, following the initial determinations and designations by the Minister.

Section 13. Effect of Designation

Section 13(1)(d) makes provision for the continuation of collective bargaining agreements prior to the designation of representative employers' organizations in the trade divisions. In effect, this is a transition provision, and therefore, the Committee recommends that section 13(1)(d) be deleted and all transition provisions dealt with in section 31.

Section 13 should allow for the negotiation of the continuance of existing national agreements and the negotiation of project agreements.

Therefore, the Committee recommends that the following subsection should be added to section 13:

13 (2) Nothing in this Act shall prevent:

- (a) the negotiation and operation of a project collective agreement; or
- (b) the operation and renegotiation of any national collective agreement existing at the date of proclamation.

Section 15. Council of Locals of a Trade Union

Section 13(1) (a) imbues the representative employers' organization with all of the rights, duties and obligations of unionized employers in a trade division. Section 13(1) (b) makes the representative employers' organization the exclusive agent to bargain collectively on behalf of all unionized employers in a trade division. However, nothing in section 15 parallels these provisions. Therefore, the Committee recommends that section 15 be amended to mirror section 13, to make a trade union the exclusive bargaining agent on behalf of all unionized employees in a trade division, vested with all of the rights, duties and obligations of unionized employees in a trade division.

Section 17. Anti-spinoff Provisions

Concerns were expressed that accreditation legislation is meaningless in the absence of strong anti-spinoff provisions

which prevent unionized contractors from operating non-union through an associated corporate entity. "Spinoffs" allow companies to operate on a non-union basis to avoid certification orders of the Labour Relations Board and to avoid adhering to the terms and conditions of a collective agreement between a representative employers' organization and a trade union. Thus "Double-breasting" or "spinning-off" which enables contractors to avoid unionization, cuts to the heart of the continued existence of the unionized construction industry.

An additional concern was expressed about some of the past decisions of the Labour Relations Board interpreting the anti-spinoff section and it was agreed that the anti-spinoff provisions of section 17 be strengthened.

The Committee further agreed that section 17 should have retroactive effect. Section 17 should "reach back" to apply to spinoff companies incorporated before proclamation of the new Act. However, the section is not intended to entitle employees to back wages for work performed before proclamation.

Therefore, the Committee recommends the following changes to section 17:

- 17(1) On application of an employer or a trade union affected, when, in the opinion of the Board, associated or related activities or businesses, undertakings or other activities are carried on under

common control or direction, by or through more than one corporation, partnership, person or association of persons, or where the corporation, partnership, person or association of persons is sufficiently related to the unionized employer that, in the opinion of the Board, they should be treated as one and the same, the Board may declare the corporations, partnerships, persons or associations of persons to be one employer for the purposes of this Act, including, without limiting the generality of the foregoing, a declaration that the corporation, partnership, person or association of persons is:

- (a) a unionized employer in that trade division; and
 - (b) bound by the designation of the minister or the order of the board.
- (2) Subsection (1) shall apply to a corporation, partnership, person or association of persons regardless of the date of its incorporation, establishment or formation.
- (3) If, in an application under subsection (1), the Board considers that activities or businesses, undertakings or other activities are carried on by or through more than one corporation, partnership, person or association of persons for the purpose of avoiding:

- (a) the effect of any designation of the Minister or order of the Board determining an employers' organization to be the representative employers' organization with respect to a trade division; or
- (b) any collective bargaining agreement that is in effect or that may come into effect between the representative employers' organization and a trade union;

the Board shall make a declaration under subsection (1) with respect to those corporations, partnerships, persons or associations of persons and the board may grant such additional relief as it considers appropriate.

- (4) Any additional relief granted by the Board pursuant to subsection (3) will apply retroactively to a date determined by the Board, but will not apply retroactively to a date prior to the date of proclamation of this Act.
- (5) On an application under subsection (1) or (2), the burden of proof:
 - (a) that the other corporation, partnership, person or association of persons is not owned, or under the same control and/or direction of, or

otherwise sufficiently related to the unionized employer; or

- (b) that the employer, unionized employer, corporation or other entity is not seeking by the acts complained of to avoid the effects of the designation of the minister or order of the board or a collective bargaining agreement;

is upon the employer, unionized employer, corporation or other entity.

Section 18. Strikes and Lockouts

In seeking to contract their services to owners, unionized contractors are met with owners' concerns that project completion could be delayed and costs increased as a result of strikes and lockouts. The Committee recognizes the importance of providing some assurances to owners that strikes and lockouts will occur only in serious circumstances.

Therefore, the Committee recommends that Section 18:

- require that before a strike or lockout can occur, a trade union and representative employers' organization must submit the dispute to conciliation and conclude conciliation through the conciliation services offered by the Department of Human

Resources, Labour and Employment.

- specify that, if conciliation is not successful, a strike or lockout can occur once the parties seek a mandate through a strike or lockout vote.
- require the parties to give 48 hours notice of a strike or lockout.
- provide that the Minister may reappoint a conciliator after the issuance of a strike or lockout notice upon the request of either party to the dispute.
- provide that the reappointment of a conciliator will not prevent the parties from proceeding to strike or lockout.

Section 18 requires that strike or lockout action be effective across an entire trade division. Therefore, strike action by a union against a representative employers' organization shall be taken against all unionized employers in a trade division by all unionized employees. Similarly, all unionized employers in a representative employers' organization in a trade division must participate in lockout action and lockout all unionized employees.

However, project collective agreements often contain no strike/no lockout clauses by which the parties agree not to strike or lockout during the term of a project. The Committee recommends

that project collective agreements be exempted from the operation of these provisions of section 18 to preserve no strike/no lockout clauses.

Therefore, the Committee proposes the following wording for section 18:

18(1) Where a trade union wishes to cause a strike in respect of a representative employers' organization, it shall cause the strike:

(a) in respect of all unionized employers in the trade division represented by the representative employers' organization; and

(b) in respect of all the work being performed by the unionized employers mentioned in clause (a);

by all unionized employees of those unionized employers.

(2) Where a representative employers' organization wishes to cause a lockout of unionized employees employed by unionized employers in a trade division, all unionized employers in the trade division shall participate in the lockout and shall lock out all unionized employees.

- (3) Subsections (1) and (2) shall not apply to those unionized employers or employees who work pursuant to a project collective agreement containing provisions prohibiting strikes and lockouts.

- (4) Before a strike or lockout can commence, a trade union or unionized employer shall:
 - (a) submit the dispute to conciliation and conclude conciliation; and

 - (b) obtain a mandate for the strike or lockout by conducting a vote in accordance with the provisions of **The Trade Union Act**.

- (5) Nothing in subsection (4) prevents the Minister in his discretion, following the conclusion of the conciliation process and the issuance of a strike or lockout notice pursuant to subsections (7) or (8), from making a further appointment of a conciliator upon receipt of a request from either party to the dispute.

- (6) The further appointment of a conciliator pursuant to subsection (5) will not prevent:
 - (a) a trade union from causing a strike; or

- (b) a representative employers' organization from causing a lockout;

providing there has been compliance with the provisions of this section.

- (7) Where the majority of the employees voting on a strike vote under section 19 vote in favour of a strike, no strike may commence unless the trade union representing a majority of the employees:

- (a) gives the representative employers' organization or representative employers' organization's agent at least 48 hours written strike notice of the date and time that the strike will commence; and

- (b) promptly, after service of the notice, notifies the minister or his designate of the date and time that the strike will commence.

- (8) No representative employers' organization may cause a lockout unless:

- (a) it gives the union or union's agent at least 48 hours written notice of the date and time that the lockout will commence; and

- (b) promptly, after the service of the notice, it

notifies the minister or his designate of the date and time that the lockout will commence.

Section 24. Collective Agreement to Remain in Force.

The Committees recommends that the following subsection be added to section 24:

24(2) Notwithstanding any provision in any other Act, any collective bargaining agreement negotiated following the date of proclamation of this Act shall remain in full force and effect until such time as a renewed, revised or new agreement is signed by both parties.

Section 28. Canadian Training Fund

The Committee recommends that Section 28 be deleted.

Section 29. Fees Payable to Representative Employee's and Employer's Organization

The unions and the employers' organizations can be expected to incur administrative costs in representing unionized employees and employers and working to further the interests of the unionized construction industry. For example, there will be costs associated with promoting unionized construction and conducting collective bargaining negotiations on behalf of all employees and employers in a trade division. The Committee wants

to ensure that the unions and the employers' organizations are able to recoup some of these costs through the collection of a contract administration and industry development fee. The Committee recommends the following section to create such a fee and provide a mechanism for its payment and collection:

- 28(1) Where an employers' organization is designated or determined to be the representative employers' organization with respect to a trade division, every unionized employer in the trade division shall pay any contract administration and industry development fee to the representative employers' organization that may be fixed by the representative employers' organization.
- (2) Where a trade union represents unionized employees of unionized employers in a trade division, every unionized employee in the trade division shall pay any contract administration and industry development fee that may be fixed by the trade union.
- (3) Every collective bargaining agreement shall be deemed to contain provisions requiring the payment of contract administration and industry development fees by unionized employees in accordance with subsection (2).
- (4) In order to facilitate collection of the contract

administration and industry development fee, every unionized employer in a trade division shall provide the representative employers' organization in a trade division and the trade union representing unionized employees of a unionized employer in a trade division with information respecting:

- (a) the number of employees in a trade division;
 - (b) the number of hours worked in that trade division in the preceding month; and
 - (c) such other information necessary for the calculation of the contract administration and industry development fees payable by unionized employers and unionized employees in a trade division.
- (5) The failure to pay a contract administration and industry development fee under this section is a violation of the Act.
- (6) The Board may, upon application, prescribe procedures for the payment and collection of contract administration and industry development fees.

C. Jurisdictional Assignment Plan

Jurisdictional disputes have been a significant problem in the unionized construction industry causing work slowdowns and

stoppages increasing project costs, delaying completion and ultimately prejudicing owner's against unionized contracting.

The effects of jurisdictional disputes are exacerbated by the resolution mechanisms currently in place. Union locals must make application through their internationals to the Jurisdictional Disputes Board centred in Washington D.C. The costs of such an application are considerable and the delays in obtaining decisions lengthy.

The Committee recognizes the importance of providing a solution to the problem of jurisdictional disputes to allay owners concerns about awarding tenders to unionized contractors.

Therefore, the Committee recommends that legislation give the Lieutenant Governor in Council power to create regulations which establish a jurisdictional assignment plan, the administration of which is funded by the government, embodying the following principles. The plan must:

- a. be created and administered in Saskatchewan;
- b. provide for the appointment by the Minister of an independent umpire, funded by the Department of Human Resources, Labour and Employment;
- c. provide that all disputes must be heard by an umpire within 24 hours of receipt by the umpire of a notice of dispute;
- d. prohibit legal counsel from making representation at

dispute hearings;

- e. prohibit work stoppages in the event of a jurisdictional dispute and provide that the umpire will not hear a dispute in the event of a work stoppage;
- f. provide that, in the event of a work stoppage, the assignment as originally established will remain;
- g. provide for an expedited appeal mechanism;
- h. establish that no monetary benefit or liability shall flow from the reversal of the umpire's decision on appeal.

The Committee recommends that regulations establishing a jurisdictional assignment plan for Saskatchewan be put in place by September 1, 1992.

D. Transitional Provisions

The Committee recommends that new legislation include transitional provisions to govern until new collective bargaining agreements are negotiated under the new Act. The transitional provisions should establish that existing collective bargaining agreements continue in force.

Secondly, the legislation should also provide that once the Minister establishes a trade division and determines a representative employers' organization, any collective bargaining agreement in that trade division shall apply to all unionized

employers and employees as though it had been negotiated under the Act.

In order to bring all agreements into line, the Committee recommends that the transitional provisions create a common expiry date of April 30, 1993 for all unexpired agreements.

The Committee proposes the following wording for the transitional provision:

- 31(1) Subject to section 34 of The Trade Union Act, any collective bargaining agreement in effect between a trade union and a unionized employer prior to the designation or determination of the representative employers' organization remains in force until the day a new collective bargaining agreement between the representative employers' organization and the trade union comes into force.
- (2) A collective bargaining agreement in subsection (1) shall, until its expiry, be deemed to have been negotiated by the representative employers' organization and the trade union representing unionized employees in a trade division.
- (3) Notwithstanding the provisions of this section, all collective bargaining agreements in subsection (1) shall be deemed to expire on April 30, 1993.
- (4) At any time following the determination of a trade division and the designation of a representative

employers' organization, the trade union and the representative employers' organization for a trade division may commence collective bargaining, and in any event, the trade union and the representative employers' organization shall commence collective bargaining by April 30, 1993.